

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

**FILED**  
**HARRISBURG, PA**

JUN 22 2004

CYNTHIA ANNE DIVEGLIA  
formerly CYNTHIA ANNE KAYLOR  
Plaintiff

[illegible]

Civil Action No. 1 CV-00-1342

**V.**

NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY  
Defendant

MARY E. D'ANDREA, CLERK  
Per MDA

MA Mannion ✓  
(Judge James McClure)

## **PLAINTIFF'S MOTION FOR RECONSIDERATION**

AND NOW, this 22nd day of June 2004, Plaintiff makes this motion for reconsideration and in support thereof, avers the following:

1. On June 17, 2004, this Honorable Court issued an Order and Memorandum relating to several Motions in Limine filed by the parties.
2. Plaintiff seeks reconsideration of that portion of the Order denying Plaintiff's First Motion in Limine relating to financial information and her Second Motion in Limine seeking to exclude documents relating to earnings and insurance.
3. The basis of Plaintiff's Motion for reconsideration is two fold:

- (a) The court's belief that the information referred to in Plaintiff's first Motion was relevant to defendant's basis for discontinuance of benefits (p. 12 of memorandum) was not the basis for discontinuance of benefits; only failure to provide medical proof of disability was the singular reason for termination. (App. 4; App. 5 and 6 )
- (b) The court's belief that "defendant can actually defend on the ground that Plaintiff was actually proportionately disabled rather than totally disabled which directly implicates Plaintiff's financial and occupations status" (Memorandum 12-13) is neither pleaded by the parties, nor contractually possible under this particular speciality policy. (App. 2 and 3) If proportionate disability is not involved in the claim, financial and occupational status cannot be implicated.

4. Plaintiff, respectfully requests the Honorable Court to reconsider its Order of June 17, 2004 in these two respects as more fully set forth in Plaintiff's Brief in Support of the Motion because Plaintiff will be severely prejudiced by the Jury's consideration of income information for their verdict will be improperly focused upon income and not disability as defined by the Northwestern Policy.

5. Defendant does not concur with the filing of this motion as evidenced by the Certificate of Nonconcurrency.

Respectfully submitted,

By: 

Archie V. Diveglia, Esq.  
PA. Attorney I.D. 17104  
2 Lincoln Way West  
New Oxford, PA 17350  
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DIVEGLIA AND KAYLOR, P.C.

ATTORNEY IN CHARGE FOR  
Plaintiff, Cynthia A. Diveglia

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

CYNTHIA ANNE DIVEGLIA  
formerly CYNTHIA ANNE KAYLOR  
Plaintiff

v.

NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY  
Defendant

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Civil Action No. 1 CV-00-1342

(Judge James McClure)

**CERTIFICATE OF NON-CONCURRENCE**  
**TO**  
**PLAINTIFF'S MOTION FOR RECONSIDERATION**  
**OF A PORTION OF ORDER OF JUNE 17, 2004**

I Archie Diveglia, hereby certify that I have spoken to Defense Counsel on June 21, 2004, in regard to this motion and he does not concur with the filing of the motion.

Respectfully submitted,

By: 

Archie V. Diveglia, Esq.  
PA. Attorney I.D. 17104  
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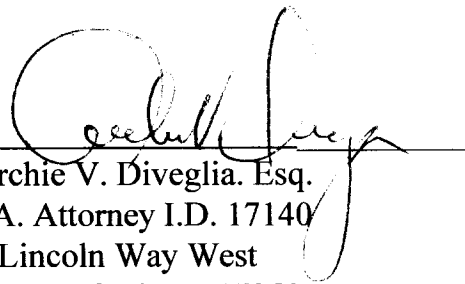
DIVEGLIA AND KAYLOR, P.C.

ATTORNEY IN CHARGE FOR  
Plaintiff, Cynthia A. Diveglia

**CERTIFICATE OF SERVICE**

I, ARCHIE V. DIVEGLIA, attorney for Plaintiff Cynthia A. Diveglia, on this 22nd day of June, 2004, do hereby state that I have served a copy of Plaintiff's Motion for Reconsideration upon counsel for Defendant by placing a copy of the same in the United States mail, first class, postage prepaid to:

E. Thomas Henefer, Esquire  
Stevens & Lee located at  
P.O. Box 679  
Reading, PA 19603-0679

By:   
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DIVEGLIA AND KAYLOR, P.C.

ATTORNEY IN CHARGE FOR  
Plaintiff, Cynthia A. Diveglia